

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Samuel L. Guy, Esquire
P.O. Box 25464
Wilmington, DE 19899

Ralph K. Durstein, Esquire
Deputy Attorney General
820 N. French Street
Wilmington, DE 19801

Re: *American Funding Services v. State of Delaware et al.*
C.A. No. S11A-04-006 RFS

Respondents' Motion to Dismiss. Granted.

Submitted: July 14, 2011
Decided: August 23, 2011

Dear Counsel:

Respondents the State of Delaware (“State”) and Justice of the Peace Court 2 (“JPC”) (collectively “Respondents”) have filed a motion to dismiss the petition for a writ of *certiorari* filed by Petitioner American Funding Services (“Funding”). Because a request for relief is not stated by Funding, the Court infers that Funding seeks to vacate a bail forfeiture ordered by JPC in a criminal case where Funding posted \$5000 cash bail. The Court confirms the JPC bail forfeiture.

On November 18, 2008, Troy Neal (“Neal”) was scheduled to appear for a rule to show cause hearing in JPC. He did not appear. A *capias* was issued for Neal, and Funding’s \$5000 bail was forfeited. The JPC Order states that if Neal was brought to Court on December 19, 2008, the Court would consider a motion to set aside part or all of the forfeiture.¹ Neither Neal nor Funding appeared on that date, nor did Funding file a motion to set aside. Neal was not “subsequently surrendered by the surety into custody,”² but was arrested on August 4, 2010 while imprisoned in Maryland. In its petition for *certiorari*, Funding seeks review of the bail forfeiture.

Respondents argue first that Funding failed to state grounds for the Court to exercise the common law writ of *certiorari*. The threshold requirements are that the judgment must be final and there is no other available basis for review.³ Bond was forfeited, but would be reconsidered if Neal appeared as ordered.⁴ The record shows that Neal and Funding did not appear. Funding did not contest the forfeiture and did not file a motion to set aside. Respondents have not identified any other avenue for review of this final judgment. Thus, subject matter jurisdiction is established, and the motion to dismiss is denied as to this issue.

¹J.P.Ct.R. 46(e)(2).

²*Id.*

³*Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del.2008).

⁴J.P.Ct.R. 46(e)(2).

Respondents also argue for dismissal because Funding has not met the provision of 10 *Del. C.* § 3103(c), which requires that service on the State is not complete until it is made “upon the person of the Attorney General or upon the person of the State Solicitor or upon the person of the Chief Depute Attorney General.” The record shows that service was rejected at the Georgetown AG’s office, but was later made on Lawrence Lewis, State Solicitor. There is no basis for dismissal here. This conclusion also puts to rest Respondent’s Rule 12(b)(7) argument that Funding failed to join the State as a party by not completing process. As shown, service was made on the State, and the motion to dismiss on this ground is denied.

Respondents challenge Funding’s assertion that it was “the sole cause of presentation of the Defendant in Court requiring set aside and remission.” On the face of the record it is clear that Neal was arrested by Delaware capital police in Maryland where he was doing time on Respondents argue there is no support for this claim and that Funding has failed to state a cause of action against Respondents.

This Court has original, exclusive trial court jurisdiction to issue common law writs of *certiorari* to all inferior tribunals, including the Justice of the Peace courts.⁵ A writ of *certiorari* is not the equivalent of an appeal because the Court may not weigh evidence or review factual findings.⁶ The threshold conditions for *certiorari* are a final

⁵*Id.* at 1212 (citing Del. Const. of 1897, Art. 4 § 10 and 10 *Del. C.* § 562).

⁶*Id.* at 1213.

judgment and no other available means of review.⁷ As found above, these conditions are met.

The only available issues on *certiorari* are whether the lower tribunal (1) made errors of law, (2) exceeded its jurisdiction or (3) proceeded irregularly.⁸ In this context, errors of law occur when the record shows that the lower tribunal “proceeded illegally” or “manifestly contrary to law.”⁹

The record on *certiorari* from a Justice of the Peace Court includes the complaint, the answer and docket entries, but not transcripts.¹⁰ In this case, Funding has not shown any record of illegal proceedings or acts manifestly contrary to law, as explained below. Nor has Funding shown that JPC does have the authority to revoke bail when a defendant fails to show up for a scheduled court appearance. *See* J.P. Ct. Crim. R. 46. Moreover, the case Funding cites to, *State v. Jefferson*,¹¹ states that the failure of a defendant to appear triggers forfeiture of the bond. *Jefferson* also states that the court will not bail out the bond company every time the company loses on its gamble.¹² As for set aside, which Funding claims is appropriate, the docket entries show that Funding did not even show up

⁷*Id.*

⁸*Id.*

⁹*Id.* at 1214.

¹⁰*Id.* at 1216.

¹¹2003 WL 22931392, at *1 (Del.Com.Pl.).

¹²*Id.* (citations omitted).

in JPC on December 19, 2008, to contest the forfeiture or bring Neal to Court.

Funding argues that JPC adopted the role of the attorney general in forfeiting the bonding because the State never appeared in Court on Funding's behalf. The AG's role was to prosecute the criminal charges against Neal, not to represent Funding's interests. Setting and forfeiting bail is within JPC's authority.¹³

Thus, on *certiorari*, Funding has not stated a claim for relief based on illegal proceedings or acts contrary to law against Respondents.

As to jurisdictional claims on *certiorari*, dismissal on this issue is appropriate only if the record fails to show that the matter was within the lower tribunal's personal or subject matter jurisdiction.¹⁴ It has already been established that JPC had subject matter jurisdiction in this matter, and personal jurisdiction has not been challenged.

As to the last issue appropriately considered on *certiorari*, irregularities of proceedings occur only if the lower tribunal failed to create an adequate record for review.¹⁵ Funding does not make this argument. The JPC record provided to this Court reflects on its face each event that occurred, as well as when and where. The record is adequate for review and shows no irregularity.

¹³J.P.Ct.Crim.R. 46.

¹⁴*Maddrey* at 1214.

¹⁵*Id.*

Thus, Funding has failed to make a claim upon which relief can be granted on *certiorari* review. JPC's bond forfeiture is confirmed, and Respondents' motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes.

cc: Prothonotary